

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1004

INTRODUCER: Senator Gelber

SUBJECT: Local Government

DATE: February 4, 2010

REVISED: 2/16/10

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Wolfgang	Yeatman	CA	Fav/1 amendment
2.		JU	
3.		CJ	
4.		JA	
5.			
6.			

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill:

- authorizes the board of county commissioners to negotiate the lease of county property for a term not to exceed 5 years rather than going through the competitive bidding process;
- allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located; and
- makes it a felony to impersonate a firefighter.

This bill substantially amends sections 125.35, 337.29, and 843.08 of the Florida Statutes. The bill reenacts section 921.0022, F.S.

II. Present Situation:

County Leasing Authority

Section 1(f), Art. VIII of the Florida Constitution, in pertinent part, provides that noncharter counties "shall have such power of self-government as is provided by general or special law." This constitutional provision is statutorily implemented in s. 125.01, F.S.

Counties are, therefore, empowered to carry on county government to the extent not inconsistent with general or special law. They are specifically authorized “to employ personnel, expend funds, enter into contractual obligations, and purchase or *lease* and sell or exchange any *real* or personal *property*.”¹

Section 125.35(a), F.S., specifically authorizes the board of county commissioners to “lease real property, belonging to the county.”²

To lease property, the board:

- must determine that it is in the best interest of the county to do so,
- must open the process for competitive bidding,³ and
- may set the terms and conditions of the lease.

However, the board of county commissioners is authorized to negotiate the lease of an airport or seaport facility under such terms and conditions as negotiated by the board.⁴ This section of the statute has been interpreted as allowing the board of county commissioners to negotiate this type of lease without going through the competitive bidding process.⁵

A local government may by ordinance prescribe disposition standards and procedures to be used by the county in leasing real property owned by the county. The standards and procedures must:

- Establish competition and qualification standards upon which disposition will be determined.
- Provide reasonable public notice.
- Identify how an interested person may acquire county property.
- Set the types of negotiation procedures.
- Set the manner in which interested persons will be notified of the board's intent to consider final action and the time and manner for making objections.
- Adhere to the governing comprehensive plan and zoning ordinances.⁶

Competitive Bidding

The principal benefit flowing to the public authority is the opportunity of purchasing the goods and services required by it at the best price obtainable. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference. The award must be made to the one submitting the

¹ Fla. Atty Gen. Op. 88-34 (Aug. 25, 1988) (citing *Speer v. Olson*, 367 So.2d 207, 210 (Fla. 1978) (finding that chapter 125, F.S., implements s. 1(f), Art. VIII, Fla. Const.; section 125.01(3)(a), F.S. (emphasis in original)).

² Section 125.35(a), F.S.

³ Section 125.35(a); *see also Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So.2d 613 (Fla. 1st DCA 1989); *Rolling Oaks Homeowner's Association, Inc. v. Dade County*, 492 So.2d 686, 688 (Fla. 3d DCA 1986); *Randall Industries, Inc. v. Lee County*, 307 So.2d 499, 501 (Fla. 2d DCA 1975).

⁴ Section 125.35(1)(b), F.S.

⁵ Fla. Atty.Gen. Op., 99-35 (June 8, 1999).

⁶ Section 125.35(3), F.S.

lowest and best bid, or all bids must be rejected and the proposal re-advertised.⁷

However, the competitive bidding process can take time and money. Temporary leases may be appropriate on an emergency basis as a result of a hurricane or other natural disaster, for short term revenue generating ventures, and for replacing vendors such as coffee shops and hot dog vendors in government buildings. At present local governments have no discretion to bypass the bidding process.

Road Mapping

Mapping of Florida's roads is done at the state and local levels. County general highway maps are a statewide series of maps depicting the general road system of each county. The Florida Department of Transportation maintains an Official Transportation Map for the state as well as maps of each of the Department of Transportation's districts. Right-of-way maps contain maps of local and state roads specific enough to show how they delineate the boundaries between the public right-of-way and abutting properties.⁸ Right-of-way maps are kept by the Department of Transportation's eight surveying and mapping offices⁹ and by each county circuit court clerk.¹⁰

Section 337.29, F.S., states that title to all roads designated in the State Highway System or State Park Road System is in the state. Local governments must duly record a deed or right-of-way map when:

- Title vests for highway purposes in the state or
- The Department of Transportation acquires lands

Title to all roads transferred between jurisdictions is in the governmental entity to which such roads have been transferred once the government entity records road information on the right-of-way map with the county in which such rights-of-way are located. Therefore, unlike state acquisition of roadways, local government acquisition cannot be perfected by deed.

Impersonating an Officer

Section 843.08, F.S., makes it a felony to falsely impersonate an officer. The statute criminalizes impersonation of: a sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Environmental Protection, officer of the Department of Transportation, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or

⁷ *Hotel China & Glassware Co. v. Board of Public Instruction*, 130 So.2d 78, 81 (Fla. 1st DCA 1961).

⁸ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – MAPS, <http://www.dot.state.fl.us/surveyingandmapping/maps.shtm>

⁹ DEPARTMENT OF TRANSPORTATION, SURVEYING & MAPPING OFFICE – RIGHT OF WAY MAPS, <http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm>.

¹⁰ Section 177.131, F.S.

representative of the Department of Law Enforcement, or a federal law enforcement officer.¹¹ Impersonating one of these individuals would be a felony of the second degree if it occurred during the commission of a felony and a felony of the first degree if the felony involved in the death or personal injury of another human being.

III. Effect of Proposed Changes:

Section 1 amends s. 125.35, F.S., to authorize a county commission to negotiate the lease of county property, other than an airport or seaport facility, for a term not to exceed five years. This provision allows the county commission to lease county property for less than five years without going through the competitive bidding process.

Section 2 amends s. 335.0415, F.S., to allow government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

Section 3 amends 843.08, F.S., to make it a felony of the third degree to impersonate a firefighter. Impersonating a firefighter would be a felony of the second degree if it occurred during the commission of a felony and a felony of the first degree if the felony involved the death or personal injury of another human being.

Section 4 readopts s. 921.0022, F.S., without changes except that the severity ranking chart includes by reference the changes to s. 843.08, F.S.

Section 5 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹¹ For additional information on impersonation laws, see COMMITTEE ON CRIMINAL JUSTICE, INTERIM REPORT 2007-107, REVIEW HOW FLORIDA AND SOME OTHER STATES PUNISH THE CRIME OF FALSELY PERSONATING A LAW ENFORCEMENT OFFICER (Nov. 2006).

B. Private Sector Impact:

This bill will allow private entities to negotiate leases of county land for five years or less.

C. Government Sector Impact:

This bill should allow county commissions to negotiate leases of county land for five years or less. As a result, county commissions would have more flexibility to determine the terms and conditions of these types of leases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:**Barcode 554206 by Community Affairs Committee on February 16, 2010:**

Deletes sections 3 and 4 of the bill, making it a felony to impersonate a firefighter.